



United States Department of Agriculture

# Office of Inspector General





### **What Were OIG's**

#### **Objectives**

To evaluate NRCS' management controls to ensure EQIP is effectively and properly implemented. Because NRCS changed its procedures for adjusted gross income provisions and payment schedules, we did not look into these issues further.

#### **What OIG Reviewed**

We reviewed 138 EQIP contracts, with obligations of nearly \$4.5 million, from FY 2009 through 2011.

#### **What OIG Recommends**

NRCS should implement controls and perform an analysis to ensure State allocation formulas are tied to environmental concerns. Also, NRCS should implement controls to ensure participants who do not meet contractual timelines are identified as non-compliant. NRCS should also require on-site verification to ensure practices are actually complete. NRCS should obtain a formal OGC opinion to determine if it has the authority to inspect and enforce that practices are maintained by the participants for the estimated lifespan of the practice versus the duration of the contract.

## **OIG reviewed NRCS' controls over the Environmental Quality Incentives Program.**

### **What OIG Found**

The Office of Inspector General (OIG) determined that the Environmental Quality Incentives Program (EQIP) is the Department of Agriculture's (USDA) Natural Resources Conservation Service's (NRCS) largest program; for fiscal years (FY) 2009 through 2011, it received nearly \$3.5 billion. We found that NRCS' controls over the program need to be strengthened in order to meet its goal to provide financial and technical assistance to participants to build practices that will address pressing environmental concerns in their areas. Specifically, we found that, while the allocation method adequately considered environmental concerns on the national level, State-level allocation processes did not. Of the six State offices we reviewed, three based their allocations on data such as number of acres, prior year obligations, or geographic location. Second, we found that State offices did not make on-site visits for 139 out of 424 practices to ensure they were completed by the participant, as required by contract. Instead, States allowed contractors and participants to self-certify. Third, we found that of the 16 participants with projects that were significantly behind schedule, NRCS did not take action to identify 11 as non-compliant with their contracts (or modifications to their contracts). In the future, this could limit NRCS' ability to take corrective action. Finally, NRCS did not require follow-up visits to ensure practices were in working order for their intended lifespan--which resulted in several practices we visited not being maintained. Without effective monitoring controls to address these issues, NRCS may not be effectively obtaining the environmental benefits that are expected of EQIP practices.

The agency generally agreed with our six recommendations. We accept management decision for all recommendations.





United States Department of Agriculture  
Office of Inspector General  
Washington, D.C. 20250



DATE: July 24, 2014

AUDIT  
NUMBER: 10601-0001-31

TO: Jason Weller  
Chief  
Natural Resources Conservation Service

ATTN: Leon Brooks  
Director  
Compliance Division

FROM: Gil H. Harden  
Assistant Inspector General for Audit

SUBJECT: Environmental Quality Incentives Program

This report presents the results of the subject audit. Your written response to the official draft report, dated June 2, 2014, is included, in its entirety, at the end of this report. Your responses and the Office of Inspector General's position are incorporated into the relevant sections of the report. Based on your written responses, we are accepting your management decisions for all audit recommendations in the report, and no further response to this office is necessary.

In accordance with Departmental Regulation 1720-1, final action needs to be taken within 1 year of each management decision to prevent being listed in the Department's annual Agency Financial Report. Please follow your internal agency procedures in forwarding final action correspondence to the Office of the Chief Financial Officer.

We appreciate the courtesies and cooperation extended to us by members of your staff during our audit fieldwork and subsequent discussions. This report contains publically available information and will be posted in its entirety to our website (<http://www.usda.gov/oig>) in the near future.



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# Background and Objectives

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## Background

The Department of Agriculture's (USDA) Natural Resources Conservation Service (NRCS) helps people conserve the land through scientifically-based, locally-led voluntary conservation efforts and improve natural resources on private lands. NRCS works with landowners through conservation planning and assistance designed to benefit the soil, water, air, plants, and animals, which in turn result in productive lands and healthy ecosystems.

NRCS' Environmental Quality Incentives Program (EQIP), which was reauthorized in the Food, Conservation, and Energy Act of 2008 (Farm Bill), is a voluntary program that provides financial and technical assistance to participants through contracts up to a maximum term of 10 years in length. These contracts provide financial assistance to help plan and implement conservation practices that address natural resource concerns and provide opportunities to improve soil, water, plant, animal, air, and related resources on agricultural land and non-industrial private forestland. In addition, EQIP helps participants meet Federal, State, Tribal, and local environmental regulations. Owners of land in agricultural or forest production or persons who are engaged in livestock, agricultural, or forest production on eligible land and also have a natural resource concern on the land may participate in EQIP. Eligible participants may receive a portion of the cost associated with practice implementation, up to 75 percent of the costs of certain conservation practices.

NRCS works with the participant to develop a schedule of operations that identifies and implements the appropriate conservation practice or measures needed to address identified natural resource concerns. The practices are subject to NRCS technical standards, adapted for local conditions. Participants may use a certified technical service provider for technical assistance necessary for certain eligible activities, services, and development of conservation activity plans.

NRCS' national headquarters in Washington, D.C., has overall responsibility for the program. These officials are responsible for making program policy and regulatory decisions, making fund allocation and reallocation decisions, reviewing and approving contracts in excess of \$150,000, managing and reviewing requests for waivers of certain EQIP requirements, maintaining fund accountability, and providing program training.

At the State level, NRCS officials are responsible for establishing State policies, resource concerns, and priorities; approving the payment schedule and payment rates; establishing the list of eligible practices; determining fund allocations within the State and establishing Statewide ranking pools to address specific resource concerns; ensuring compliance with appropriate internal controls, including separation of duties; and randomly selecting 5 percent of the self-certified limited resource participants and 5 percent of the beginning farmers or ranchers for verification.

Officials at the field office level are responsible for accepting applications and entering them into the ProTracts<sup>1</sup> computer system, determining participant and land eligibility, ranking and selecting applications approved for funding, entering all approved contracts into ProTracts, ensuring contracts and payments are not approved in excess of allocations, certifying installation of completed structural and vegetative practices, conducting spot checks, and monitoring contract expiration dates in order to complete all required work prior to contract expiration.

### **Allocations and Ranking**

NRCS' national office is responsible for developing and implementing an environmental concern-based methodology to support fund allocations to the States. The State conservationist will then direct funds toward identified environmental concerns at the State level, local level, or both. Applications are ranked at the local offices, typically, with the preliminary rankings reviewed and approved by staff at the area offices or management units in each State. A 2006 Government Accountability Office (GAO) report on allocations identified that NRCS' process for providing EQIP funds to States was not clearly linked to the program's purpose of optimizing environmental benefits; as such, NRCS may not be directing funds to States with the most significant environmental concerns. NRCS revised its allocation formula and now uses environmental concerns as the primary factor in allocating funds to the States.

### **Compliance**

To ensure program integrity, NRCS has instituted a number of compliance control checks. These include annual contract reviews, administrative spot-check reviews of historically underserved participants, and other spot-checks, as needed.

District conservationists perform annual contract reviews to ensure practices are being implemented as scheduled. Numerous elements of the contract should be reviewed, including: success of completed practices and systems; operations and maintenance of practices and systems; status of incomplete practices; reasons for lack of progress; need for revising the conservation plan schedule of operations; descriptions of any potential violations of the contract; agreement of any practices to be implemented in the next fiscal year (FY); confirmation that the participant still controls all land under contract; and financial activity, verifying that all completed practices and activities have been certified and paid, and that all remaining open obligations are valid. If the conservation practices are not being completed on time, the process allows for contract modifications, possible non-compliance letters, and eventual termination if the participant fails to complete the practices as specified in its contract.

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<sup>1</sup> ProTracts is a web-enabled application that streamlines the application and contracting process for conservation programs.

## Objectives

Our objective was to evaluate NRCS' management controls to ensure EQIP is effectively and properly implemented in accordance with laws, regulations, policies, and procedures. In order to accomplish this objective, the audit team focused on the following areas:

- Compliance with adjusted gross income provisions.
- Compliance with contract provisions.
- Development of payment schedules.
- Ranking process to select applications.
- Validity of participant payments.

During our audit work, we observed actions to strengthen controls over adjusted gross income provisions. Because GAO was performing a concurrent review of adjusted gross income limits USDA-wide, we did not pursue further work in this area. Additionally, NRCS changed its method for developing payment schedules in 2012, which was beyond the scope of our audit; consequently, we did not review NRCS' payment schedules further.

## **Section 1: NRCS Controls Over Environmental Quality Incentives Program**

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### **Finding 1: NRCS State Offices Do Not Sufficiently Base their Allocations on Environmental Concerns**

Of the six States in our sample, we found that three State offices did not consider environmental concerns when allocating funds to areas within the State. Instead, these States used output-based data, such as the number of cropland acres in the county, which did not necessarily indicate an environmental concern. This occurred because the national office had not provided clear guidance to the State offices on proper allocation formulas, nor did it verify that the allocation process used by the States adequately considered environmental concerns. Additionally, States felt they were meeting this requirement because they had assessed the pressing environmental concerns in their State. However, without a selection process that focuses on not only identifying but also addressing these concerns, the overall conservation benefits obtained by the program are reduced. As a result, projects with the greatest impact on the environment may be passed over for projects with less impact.

The goal of EQIP is to address environmental concerns through promoting agricultural production, forest management, and environmental quality. Ensuring EQIP funds go to areas demonstrating the greatest environmental concerns is a three-step process. First, NRCS' national office is responsible for developing and implementing a national methodology to identify environmental concerns in each State, and allocating the funds to each State accordingly.<sup>2</sup> Second, the State offices develop their own processes to allocate EQIP funds to local areas where the environmental concerns exist. It is the State conservationist's responsibility to evaluate environmental concerns at the State and local level, determine which practices most effectively address these concerns, and direct funds to areas that most demonstrate those concerns. Finally, the local office is responsible for consistently evaluating the applications to ensure that funded contracts deliver the greatest environmental benefits.<sup>3</sup>

While the NRCS national office has in recent years modified its EQIP national allocation methodology, more change is needed at the State level to ensure that NRCS fully meets the program's goals of addressing the most pressing environmental concerns. In 2006, GAO indicated that the formula the NRCS national office used to allocate EQIP funds to the States was flawed, in part, because it placed too much emphasis on factors related to natural resources in a State (e.g., number of acres) and not enough to environmental concerns in a State (e.g., number of impaired acres).<sup>4</sup> To address this, the national office established a new national allocation methodology in FY 2012, which required States to show a direct correlation to their

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<sup>2</sup> As part of the process, the national office dedicates a portion of State funds for national initiatives. The general funds that are not designated for national initiatives are for the discretion of the State conservationists to use as they see fit based on resource needs in their States.

<sup>3</sup> EQIP Manual, Title 440, § 515.0A(i); 515.10I(x), J(xii), and K(xviii); 515.61E(1) and (2); and 515.72B(iii), September 2009.

<sup>4</sup> GAO-06-969, "Agricultural Conservation: USDA Should Improve Its Process for Allocating Funds to States for the Environmental Quality Incentives Program," dated September 2006.

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identified environmental concerns.<sup>5</sup> We found that the national office's revised formula effectively identifies the States with the most significant environmental concerns. However, the new formula only improves the first of the three steps in the allocation process: allocating funds to the State office. In order to optimize environmental benefits, States must be equally diligent in identifying and targeting their funds to the areas and projects addressing the greatest environmental concerns within their respective areas.

We found that three States—Minnesota, Missouri, and Texas—did not base their determinations on environmental concerns when determining how to allocate their funds. The methods these States used to make their determinations do not meet the national office's requirement that State conservationists direct funds toward identified environmental concerns. For example, Missouri divided the general EQIP funds based solely on number of land-use acres. Additionally, in Texas, the State office allocated funds to the areas based on prior year obligations and potential demand. Finally, Minnesota divided allocations evenly throughout regions, without regard to environmental concerns. When this occurs, the most pressing environmental concerns in the State may not be addressed—depending on which region they are in. For example, one region in Minnesota (consisting of multiple counties) funded a contract with a ranking score of 32.9, indicating very little environmental benefit, while a different region in the State had to deny applications with ranking scores of close to 250 because it had used all its allocated funds. While we found all six States we reviewed had allocation methods that could result in this situation,<sup>6</sup> Minnesota is the only State to divide general EQIP funds equally between regions.<sup>7</sup>

We also noted that the remaining three States—Iowa, Kansas, and Nebraska—could improve their allocation processes to ensure that they are sufficiently directing EQIP funds towards the most pressing environmental concerns. While our review in Iowa, Kansas, and Nebraska, showed that these States did consider environmental concerns in allocating general funds, these concerns are only one of several factors. In Iowa and Nebraska, factors tied to environmental concerns—like acres of cropped fields that have soil with high erosion rates, or a county's percentage of impaired waters—were used along with output-based factors—like the percentage of irrigated acres and the number of animals in the county. In Iowa, other output-based data—such as the number of acres and number of animals—accounted for upwards of 40 percent of its allocation formula. Similarly, to determine the amount of funds directed to the local level in Kansas, the State collected data to determine cropland acres with the potential to erode at greater than or equal to four tons. While a good example of identifying an environmental concern (soil erosion), Kansas also included the number of pastureland and cropland acres in its formula. These factors are not tied to an identified environmental concern and only serve to dilute the importance of the soil erosion factor.

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<sup>5</sup> An environmental concern is defined as "an expected degradation of the soil, water, air, plant or animal resource base to an extent that the sustainability or intended use of the resource is impaired."

<sup>6</sup> For example, one county in Kansas had a sufficient allocation in 2011 to fund a relatively low-ranked cropland health application, while hundreds of higher ranked applications in other nearby counties went unfunded. Approximately two thirds of all cropland health applications in this region that went unfunded had a higher ranking score but were in counties that did not have sufficient allocated funds.

<sup>7</sup> General EQIP funds are not tied to a national initiative (like the organic or seasonal high tunnel initiatives) or a State-specific initiative (like the Minnesota soil health initiative).

This occurred because the national office had not provided clear guidance to the State offices on how to develop proper allocation formulas. For example, although the EQIP manual outlines a list of elements to consider when determining how to allocate EQIP funds,<sup>8</sup> it does not specify the level of emphasis that should be given to various elements or provide quantifiable formulas. Additionally, the handbook provides conflicting information. It initially notes that the State conservationist should direct funds toward “meeting national priorities and measures, identified resource concerns at the State level, local level, or both, and State priority resource concerns.” In a subsequent section, however, the handbook then lists other considerations, in addition to environmental concerns, such as program performance and results, and science-based background data.<sup>9</sup> Without consistent guidance, we found that States developed allocation methods and processes that varied from each other. When we spoke to NRCS national officials, they stated that they had not performed a review of the States’ allocation processes to verify that the allocation process used by the States adequately considered environmental concerns.

Additionally, we found that State offices generally felt their processes adequately considered environmental concerns. For example, Missouri State officials explained that their process of using the number of acres to allocate general funds worked for their purposes, and claimed that the large number of unfunded applications showed that they were selecting highly-ranked applications, which achieved environmental benefits. While we acknowledge that the Missouri State office may have a process for ranking and selecting applications, there is no guarantee that applications with maximum environmental benefit across area lines will be funded.

Officials in Texas similarly felt that they were taking into account environmental concerns because they had individual soil and water conservation districts evaluate which pressing environmental concerns should be addressed with EQIP funding. However, when allocating the actual EQIP funds, Texas officials used prior year obligations and potential demand as the determining factors instead. While it is necessary to determine which environmental concerns are most pressing, unless the Texas State office then uses these environmental concerns to allocate EQIP funds, it will not be meeting the mission of the program—to fund EQIP projects that will best address these concerns.

Officials in Minnesota agreed that they need to improve their allocation process and determined that, independent of how many projects were funded or not funded, the applications that have the greatest environmental impact were not always funded across regional lines. Consequently, starting in 2014, the Minnesota State office will select which applications to fund on a Statewide basis, rather than allocating funds to individual geographic regions, which should result in the projects that address the most pressing environmental concerns in the entire State being selected.

To fully achieve the purpose of EQIP and optimize the environmental benefit of these funds, the national office must take further steps to strengthen the process—including clarifying the existing guidance and implementing additional controls regarding the State’s allocation formulas. NRCS national officials agreed that State conservationists should identify the unique environmental concerns in their States and direct general EQIP funds to address these environmental concerns. This is particularly important because the at-risk acres identified as part

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<sup>8</sup> EQIP Manual, Title 440, § 515.61E(2), September 2009.

<sup>9</sup> EQIP Manual, Title 440, § 515.61E(1) and (2), September 2009.

of the national allocation formula would not necessarily be used in the State's allocation process for general funds. However, they emphasized the States' general EQIP funds are to address an identified environmental concern that may be unique to their State.

While the national office has systematically removed output-based factors from its allocation formula, without a similar allocation method at the State level, the national office's efforts to identify and direct funds to the areas that could most benefit from EQIP funding is less effective. Without all offices acting in concert, the purpose of EQIP—optimizing environmental benefits—will not be fully realized.

## **Recommendation 1**

Implement controls and clarify guidance provided in the Environmental Quality Incentives Program (EQIP) manual to ensure the allocation methodology used by State conservationists relates to environmental concerns.

### **Agency Response**

In its June 2, 2014, response, NRCS agreed to update EQIP policy to revise and clarify State Conservationist's responsibility to develop and implement robust and meaningful EQIP State allocation formulas to provide assurance that funding is appropriately targeted to priority natural resource concerns. The EQIP policy manual is being updated and is expected to be finalized in September 2014 for FY 2015 implementation. NRCS stated that the estimated completion date for the corrective action is October 15, 2014.

### **OIG Position**

We accept management decision for this recommendation.

## **Recommendation 2**

Schedule and conduct analysis of State allocation formulas to ensure that identified resource concerns are the primary factor for allocating EQIP funding.

### **Agency Response**

In its June 2, 2014, response, NRCS agreed to conduct analysis of State-developed EQIP allocation formulas to help identify inconsistencies in interpretation of EQIP policy and use of appropriate factors used to target funding to priority natural resource concerns. NRCS will conduct this review during FY 2014, and incorporate any needed revision of EQIP policy in FY 2015. NRCS stated that the estimated completion date for the corrective action is December 31, 2014.

## **OIG Position**

We accept management decision for this recommendation.

## **Finding 2: NRCS Inconsistently Verifies That Practices Are Completed Prior to Payment**

NRCS State offices inconsistently verify that practices are completed according to standards and specifications prior to approving payment. Specifically, while some State offices perform physical inspections to ensure practices are completed prior to payment, others allow contractors and participants to self-certify that their practices are complete. We identified 139 practices out of 424 that should have been physically inspected, but were not. This occurred because the NRCS national office allows each State conservationist to determine how to certify that practices meet the specifications of the contracts prior to payment. While we did not identify any incomplete practices in our own onsite inspections, without visually inspecting a practice and, instead, relying on the contractor and/or participant, NRCS has reduced assurance that the practice was completed according to standards and specifications.

According to the EQIP manual, to ensure practices meet the program's goals and objectives, the district conservationist is responsible for certifying installation and check-out of completed structural and vegetative practices, unless a technical service provider completes the certification.<sup>10</sup> Additionally, a Practice Approval and Payment application is filled out once an applicant completes a practice.<sup>11</sup> On this form, NRCS certifies that the practice is complete prior to payment.

We identified that not all NRCS offices were certifying installation by physically inspecting completed structural and vegetative practices. We found that the methods NRCS used to certify varied widely from State office to State office. We reviewed a total of 121 contracts and determined that 424 practices should have been certified through physical inspection.<sup>12</sup> While NRCS staff visited and verified 285 practices, they did not visit and verify the remaining 139 practices. Instead, in some States, NRCS staff relied on contractors' and landowners' self-certifications. Additionally, in instances where a contractor was performing work on several practices, we found that NRCS officials would only visit a percentage of the contractor's work; however, they would certify all of the contractor's work on multiple sites as completed.

This occurred because the NRCS national office allows each State office to determine how it will certify and check-out completed practices and does not specify the need for a physical inspection. Rather than establishing what the certifying process should entail, NRCS management permitted a wide variety of interpretations, including permitting local staff to accept landowner certification and contractor's notes in lieu of personal visits to certify a practice's completion. When we asked NRCS national officials why they permitted this, they stated that the resources available to the local offices may be strained, due to staffing and/or budgetary constraints. However, we found that one local office, which had only one NRCS employee, was able to physically inspect practices for 25 contracts, while another local office, which had four employees, relied instead on self-certifications, even though they only had practices for

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<sup>10</sup> EQIP Manual, Title 440, § 515.10K(xxiii), September 2009.

<sup>11</sup> NRCS-CPA-1245, Practice Approval and Payment Application.

<sup>12</sup> The remaining practices were management practices, which would not be observable during a site visit.

50 contracts.<sup>13</sup> We acknowledge that the workload in each office may vary greatly, dependent on the number of programs each local office administers.

We believe that the only way NRCS can objectively confirm that practice standards are met and completed is by performing physical inspections, rather than relying on the contractor and/or participant's self-certification. While we acknowledge that a site visit may not be productive for all practices—such as with management practices, which may have no observable features—in most cases, a site visit would best ensure that each practice is meeting the overall purpose of the program: to promote agricultural production, forest management, and environmental quality as compatible national goals, and to optimize environmental benefits.

### **Recommendation 3**

Develop and implement procedures that require certifying officials to perform on-site verification that observable practices are completed in accordance to practice standards and specifications.

### **Agency Response**

In its June 2, 2014, response, NRCS stated that to facilitate efficient use of NRCS personnel, contractors, TSPs, and other qualified individuals, NRCS General Manual (GM) policy does allow State Conservationists latitude to accept certification of installed practices if appropriate documentation is provided that verify the design standards have been met. The fact that actual field verification checks were not conducted by NRCS personnel does not necessarily equate to poor practice installation or performance. NRCS policy also requires spot check of all practices implemented with NRCS assistance to assure that such practices meet design standards and the conservation intent. Contracting policy requires annual contract reviews to assure practices are checked and certified to meet NRCS standards. The State Conservationist is responsible for all policy, certifications, and spot checks are followed and implemented to assure conservation benefits are realized. NRCS will complete a review of policy and procedures during FY 2014, and if needed, EQIP and GM policy will be revised. NRCS will issue a memo or National Bulletin reminding local office staff of proper certification and documentation procedures. NRCS stated that the estimated completion date for the corrective action is October 15, 2014.

### **OIG Position**

We accept management decision for this recommendation.

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<sup>13</sup> The contracts mentioned are contracts that were entered into and considered completed or active for fiscal years 2009 through 2011.

### **Finding 3: NRCS Does Not Always Identify Participants as Non-Compliant with Contract Timelines**

We found that NRCS did not identify 11 of 16 participants who were behind schedule in completing their practices as non-compliant, nor was it taking sufficient corrective action. This occurred because NRCS believes keeping a healthy working relationship with participants is important and taking corrective action may deter participants from completing their work. As a result, NRCS is not holding participants accountable for the required and accepted timelines, and is funding practices which will not see actual conservation benefits within the anticipated timeline. Also, if NRCS does not identify these participants as non-compliant, it may need to delay corrective action if the participants do not fulfill their contract.

When participants sign the schedule of operations for their EQIP contract, they are agreeing to implement their practices in the planned year.<sup>14</sup> Often, when participants are behind schedule, they are allowed an extra year through a modification to their contract.<sup>15</sup> If the participant is still unable to complete the practice in accordance with the modification, they are then considered as being non-compliant with their contractual agreement. At this point, NRCS field office staff completes a non-compliance document that gives the participant one more year to implement the practice before NRCS begins the cancellation/termination process.<sup>16, 17</sup> NRCS monitors contract compliance through an annual contract review.<sup>18</sup>

We found that NRCS field staff does not always identify participants as non-compliant when necessary. Out of the 121 participants we reviewed, 16 were non-compliant because they were behind schedule. However, NRCS did not identify 11 of these 16 (about 69 percent) as non-compliant. These 11 participants' EQIP obligations totaled \$218,496.

The NRCS national office stated that it did not always identify participants as non-compliant in order to maintain a healthy working relationship with the participant and to encourage completion of the conservation work. However, the Office of Inspector General (OIG) is concerned that by not following the contracting manual and holding participants accountable for completing their practices on time, NRCS is limiting its ability to later take corrective action, should a contract need to be cancelled.

Additionally, we also found that in one instance, NRCS local office staff did not identify a participant as non-compliant, even though the participant had repeatedly not met extended timeframes. NRCS inappropriately paid that participant an indexed payment rate—a practice allowed only for contracts completed according to or ahead of schedule.<sup>19</sup> NRCS did not identify the participant as non-compliant, even though the practice, originally scheduled to be completed in 2010, was not completed until 2013. Instead, when it became clear that the participant could not complete the project by 2011, the extended timeline permitted by the

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<sup>14</sup> NRCS-CPA-1155, Conservation Plan or Schedule of Operations.

<sup>15</sup> NRCS-CPA-1156, Revision of Plan/Schedule of Operations or Modification of a Contract.

<sup>16</sup> NRCS-CPA-153, Agreement Covering Non-Compliance with Provisions of Contract.

<sup>17</sup> Conservation Program Contracting Manual, Title 440, § 512.55.

<sup>18</sup> Conservation Program Contracting Manual, Title 440, § 512.55B.

<sup>19</sup> An indexed payment rate is automatically applied to the payment through the ProTracts system.

modification, NRCS approved a second modification, which allowed the practice to be completed in two different years and pushed the final completion date to 2013. When the participant completed the practice in 2013, the NRCS local office paid the participant a 14.3 percent indexed payment rate. As the participant was behind schedule, an indexed payment rate should not have been allowed.

Because NRCS has not been identifying non-compliant participants, NRCS limits its ability to take corrective action when the participant does not complete their contract. Since NRCS can only begin the termination process one year after identifying the participant as non-compliant, it is important that NRCS field officials identify non-compliance promptly, to allow them to later take appropriate corrective action. By identifying the participant as non-compliant, NRCS is still giving a participant the opportunity to implement the practice that is already behind schedule without hindering NRCS' ability to eventually cancel the contract, if necessary.

#### **Recommendation 4**

Issue a memo reminding NRCS local office staff of the procedures identified in the *Conservation Program Contracting Manual* and the importance of timely identifying participants as non-compliant when performing an annual contract review.

#### **Agency Response**

In its June 2, 2014, response, NRCS agreed to issue the bulletin reminder as requested during FY 2014 reminding State Conservationists to enforce provisions of contracting policy for timely completion of EQIP program contract reviews. NRCS stated that the estimated completion date for the corrective action is September 30, 2014.

#### **OIG Position**

We accept management decision for this recommendation.

## **Finding 4: NRCS Does Not Perform Follow-Up Visits on Practices with a Multi-Year Lifespan After Contract Expiration**

We found that not all practices installed through EQIP are maintained in accordance with the participants' signed EQIP contract and that NRCS would not have identified these deficiencies, since it does not perform follow-up visits after the contract has expired. Specifically, we visited 97 sites and noted that 3 had maintenance issues within only 3 years of completing the practices, even though the practices were intended to remain in working order for several more years. This occurred because NRCS believes it only has the power to enforce maintenance of the practices during the period of the contract, even though participants agree to maintain practices for the estimated lifespan of the practices—which usually exceeds the contract period by several years. If practices are not maintained for their estimated lifespan, NRCS has reduced assurance that the full conservation benefits associated with applied practices are obtained through the program.

The purpose of EQIP is to “promote agricultural production, forest management, and environmental quality as compatible goals, and to optimize environmental benefits, by[,]” among other things, “providing flexible assistance to producers to install and maintain conservation practices that sustain food and fiber production. . . .”<sup>20</sup> In accordance with this overall purpose, NRCS expects program participants “to operate and maintain each conservation practice installed under the contract for its intended purpose for the conservation practice lifespan as specified in the operations and maintenance agreement.”<sup>21</sup> Each participant is required to sign several documents in which the participant agrees to maintain the conservation practice for the lifespan(s) of the practices.<sup>22</sup> NRCS, however, believes that it cannot enforce the maintenance requirement after the contract expiration date.<sup>23</sup>

During our site visits, we found that practices were not always maintained according to practice standards and specifications and that NRCS would not have identified these deficiencies as they did not perform follow-up visits after the contract expired, even when the lifespan of the practice

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<sup>20</sup> 16 USC (United States Code) § 3839aa(3), *as added by* Food, Conservation, and Energy Act of 2008, Public Law (P.L.) 110-246, § 2501(a), 122 Stat. 1651, 1785.

<sup>21</sup> 7 Code of Federal Regulations (CFR) § 1466.22(b) (2014). Prior to January 15, 2009, NRCS did not just expect participants to maintain practices for their intended lifespans; it was mandatory. *See* 7 CFR § 1466.22 (2009) (“The participant *must* operate and maintain each conservation practice installed under the contract for its intended purpose for the life span of the conservation practice as determined by NRCS.” (emphasis added); *see also* NRCS Conservation Program Contracting Manual, Title 440, § 512.11D. (Oct. 2006) (“All conservation practices established through a [Conservation Program Contract] will be maintained for the established life span.”).

<sup>22</sup> *See* Form NRCS-CPA-1202, *Conservation Program Application*; Form NRCS-CPA-1202-CPC, *Appendix to Form NRCS-CPA-1202 Conservation Program Contract for Environmental Quality Incentives Program*; Form NRCS-CPA-1155, *Conservation Plan or Schedule of Operations*; Form NRCS-CPA-1245, *Practice Approval and Payment Application*. For example, by signing the payment application, a participant agrees to refund all or part of the cost-share if the practice is destroyed or not properly maintained before the practice service life expires. *See* Form NRCS-CPA-1245, § 2.

<sup>23</sup> Rather, as set forth in EQIP regulations, “NRCS may periodically inspect the conservation practices *during the contract duration* as specified in the operation and maintenance agreement to ensure that operation and maintenance requirements are being carried out, and that the conservation practice is fulfilling its intended objectives.” 7 CFR § 1466.22(d) (emphasis added). Prior to January 15, 2009, EQIP regulations stated, “NRCS may periodically inspect a conservation practice *during the lifespan of the practice* as specified in the contract to ensure that operation and maintenance are occurring.” *See* 7 CFR § 1466.22 (2009) (emphasis added).

extended well beyond the contract expiration date. Specifically, we visited 97 sites and noted that 3 had maintenance issues within only 3 years of completing the practices, even though the practices were intended to remain in working order for several more years. In all of these examples, the participant did not maintain the practice in accordance with the EQIP contract, and NRCS was unaware of the practice deficiencies. This resulted in cost-share amounts of \$14,979 paid to participants where the conservation practices were no longer achieving the desired conservation benefits. As explained below, we recommend that NRCS consult with the Office of the General Counsel (OGC) to determine whether they have the authority to enforce compliance within the lifespan of the practice, which could include, if appropriate, recovery of previously disbursed funds.

First, we found that a participant built a seasonal high tunnel—a practice that is intended to extend the growing season of crops. This practice was certified as complete on June 14, 2010, and should have remained in working order until June 2014—4 years after its completion.<sup>24</sup> However, when we visited the practice on May 2, 2013, we found the seasonal high tunnel was damaged and had not been returned to a working condition (see Figure 1). The participant, an NRCS employee, informed us that the damage had occurred in late 2010—six months after the practice was certified as completed. The local district conservationist was unaware of how long the structure had been inoperable. The State conservationist said producers should maintain the structures for at least the practice lifespan. Similarly, according to the appendix to the contract the participant signed, he should have maintained the practice in accordance with the operation and maintenance agreement. As the participant did not maintain this practice, the conservation benefits associated with the \$4,882 in EQIP payments were not fully achieved.

**Figure 1: Seasonal high tunnel, installed in 2010, which was in a working condition for less than 6 months and, as of May 2013, still had not had the covering repaired**



We also found two additional contracts where terraces were not maintained. Terraces, which have a 10-year lifespan, are intended to reduce soil erosion and retain runoff for moisture

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<sup>24</sup> According to the schedule of operations the participant signed, a seasonal high tunnel has a lifespan of 4 years.

conservation. The first contract was certified as complete on December 16, 2011, and should have remained in working order until December 2021.<sup>25</sup> However, when we visited the practice with the district conservationist on April 24, 2013, we identified that the terrace was washing out and not functioning properly (see Figures 2 & 3). The district conservationist also identified that the soil type that was used was not appropriate for building a terrace and, had this been identified earlier during construction, could have avoided the eventual damage. While the improper soil did result in the need for more maintenance, it was the participant's responsibility to ensure the practice was maintained for the lifespan of the practice. As the participant did not maintain this practice, the conservation benefits associated with the \$6,662 in EQIP payments were not fully achieved.

**Figures 2 & 3: Damage to terrace due to washouts, which had not been repaired by the participant**



We visited a terrace from a second contract 2 years after NRCS certified it was complete, and found that the terrace was damaged (see Figures 4 & 5).<sup>26</sup> The district conservationist stated that the participant had most likely run some kind of machinery over the terrace, which not only destroyed the critical area planting that was completed, but also cut into the terrace.<sup>27</sup> This caused the terrace to no longer be at a 2:1 slope, which the district conservationist stated was the standard slope for this terrace type. As the participant did not maintain this practice, the conservation benefits associated with the \$3,436 in EQIP payments were not fully achieved.

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<sup>25</sup> According to the schedule of operations the participant signed, the terraces have a lifespan of 10 years.

<sup>26</sup> We performed our visit on April 24, 2013. NRCS certified the contract as complete on February 3, 2011.

<sup>27</sup> According to Iowa EQIP List of Eligible Practices and Payment Schedule FY2011, dated December 2010, critical area planting establishes permanent vegetation on sites that have or are expected to have high erosion rates, and on sites that have physical, chemical, or biological conditions that prevent the establishment of vegetation with normal practices. The purpose is to stabilize areas with existing or expected high rates of soil erosion by water or wind and restore degraded sites that cannot be stabilized through normal methods.

**Figures 4 & 5: Damage due to participant possibly running machinery over the terrace, cutting into the slope of the terrace and resulting in the loss of critical area planting**



If NRCS staff does not visit practices after they have been completed and the contract has expired, NRCS will not be aware of their actual condition, and will have reduced assurance that participants are maintaining and achieving the desired conservation benefits for the lifespan of the practice. NRCS should obtain a formal legal opinion from OGC to determine participant's responsibility for maintaining the practice for its estimated lifespan and related remedies available to NRCS. Based on this opinion, NRCS should (1) propose revisions to their regulations to clarify NRCS' authority to enforce compliance and (2) ensure that contract documentation signed by the participants is consistent with the law and regulations.

### **Recommendation 5**

Obtain a formal OGC opinion regarding participant's responsibilities for maintaining practices for their estimated lifespan and related remedies that are available to NRCS. OGC also should determine whether NRCS has authority to perform onsite inspections and enforce compliance after expiration of the contract period.

### **Agency Response**

In its June 2, 2014, response, NRCS stated they have repeatedly consulted OGC on this topic since EQIP was first authorized in 1996 and most recently during the promulgation of the EQIP interim rule subsequent to enactment of the Food, Conservation, and Energy Act of 2008. Throughout, OGC had advised that NRCS did not have the authority to enforce practice lifespan requirements as a contract violation matter upon expiration of the EQIP contract period, and NRCS rule and policy were based upon such OGC advice. Additionally, NRCS has provided documentation of such advice to OIG. Nevertheless, given recent OGC personnel changes, NRCS agrees with the request and will obtain written confirmation from OGC whether NRCS may enforce provisions of the EQIP contract for practice maintenance after expiration of the EQIP contract. NRCS stated that the estimated completion date for the corrective action is July, 2014.

## **OIG Position**

We accept management decision for this recommendation.

## **Recommendation 6**

Based on the formal OGC opinion, implement any appropriate revision to the regulation to clarify NRCS' authority to enforce compliance of conservation practice maintenance requirements and related remedies. Also, NRCS should ensure program procedures and required contract documentation signed by the participant are consistent with the regulation.

## **Agency Response**

In its June 2, 2014, response, NRCS agreed that if the OGC opinion (Recommendation 5) provides clarification that EQIP statutory authority provides NRCS with authority to enforce compliance of conservation practice maintenance after contract expiration, NRCS will revise policy to accommodate the provision and appropriate training, procedures, and notification of program participants. NRCS stated that the estimated completion date for the corrective action is October 15, 2014.

## **OIG Position**

We accept management decision for this recommendation.

## Scope and Methodology

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Our objective was to evaluate NRCS' management controls to ensure EQIP is effectively and properly implemented in accordance with laws, regulations, policies, and procedures. Specifically, we reviewed compliance with adjusted gross income provisions; compliance with contract provisions; development of payment schedules; ranking process to select applications; and validity of participant payments. We conducted our audit of EQIP at NRCS' national office in Washington, D.C., 6 State offices, and 12 local offices. We performed fieldwork for this audit from January 2013 through October 2013. (See Exhibit A for a listing of NRCS offices and dates visited.)

We judgmentally selected our contracts to review using a combination of random number generators, high dollar contracts, and contracts in various EQIP fund pools. We reviewed EQIP contracts entered into in FYs 2009 through 2011 and the subsequent servicing and payment on these contracts in 2012 and 2013. During FYs 2009 through 2011, NRCS entered into more than 100,000 EQIP contracts, totaling nearly \$3.5 billion in program obligations. NRCS officials in our 6 sampled States entered into about 28,000 contracts and obligated over \$525 million.<sup>28</sup> As part of our audit, we reviewed 138 contracts with obligations of nearly \$4.5 million. In addition, we reviewed 18 unfunded EQIP applications. (See Exhibit A for a breakdown of contracts and unfunded applications reviewed by NRCS office.) We also reviewed NRCS' revised formula for allocating EQIP funds to State offices, which was implemented in 2012.

While our original audit objective included a review of the new adjusted gross income eligibility process, we decided not to report on this since NRCS revised the process in FY 2013 during our fieldwork. Additionally, while we reviewed the old payments process in effect during our audit scope period, we did not review NRCS' new regionalized payment schedule process, since our sampled contracts predated its implementation. The new regionalized payment schedule process was initiated in 2012 and fully implemented in 2013.

To accomplish our objectives, we performed the following procedures:

- Obtained and reviewed documents, such as the 2008 Farm Bill.
- Reviewed NRCS published guidance, instructions, handbooks, and regulations related to EQIP and the contracting process.
- Reviewed an internal NRCS review of the payment schedules.
- Reviewed EQIP contract folders and related documentation, including unfunded applications.
- Discussed the program and requirements with NRCS officials at the national, State, and local levels.
- Performed 97 site visits.<sup>29</sup>

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<sup>28</sup> Included in this \$525 million is almost \$395 million in general EQIP funds that are used at the discretion of the State conservationists to address local environmental concerns. The remaining \$130 million is earmarked to address national and State-wide environmental concerns.

<sup>29</sup> We reviewed 138 contracts but only 97 had completed structural practices at the time of our fieldwork. (See exhibit A)

- Discussed the issues we found during our review with NRCS national officials.

During the course of our audit, we did not verify information in any NRCS electronic information system and we make no representation regarding the adequacy of any agency computer systems or the information generated from them. NRCS used its Protracts computer system to generate universe data for the audit team, which we used to select our sample.

We conducted this performance audit in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

## Abbreviations

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CFR.....	Code of Federal Regulations
EQIP.....	Environmental Quality Incentives Program
FY .....	Fiscal Year
GAO.....	Government Accountability Office
GM.....	General Manual
NRCS .....	Natural Resources Conservation Service
OGC .....	Office of the General Counsel
OIG .....	Office of Inspector General
P.L.....	Public Law
USDA.....	Department of Agriculture

## Exhibit A: Sites Visited

State	Date Visited	NRCS Offices Visited	Number of EQIP Contracts Reviewed	Number of Unfunded Applications Reviewed
Missouri	January 2013	State Office, Columbia, MO		
		Field Office, Mexico, MO	13	2
		Field Office, Booneville, MO	12	2
Iowa	April 2013	State Office, Des Moines, IA		
		Field Office, Newton, IA	10	2
		Field Office, Oskaloosa, IA	12	0
Kansas	April 2013	State Office, Salina, KS		
		Field Office, Effingham, KS	10	2
		Field Office, Abilene, KS	11	2
Minnesota	April 2013	State Office, St. Paul, MN		
		Field Office, Waite Park, MN	12	0
		Field Office, Crookston, MN	12	2
Nebraska	June 2013	State Office, Lincoln, NE		
		Field Office, Aurora, NE	11	0
		Field Office, Auburn, NE	12	2
Texas	June 2013	State Office, Temple, TX		
		Field Office, Brownwood, TX	11	2
		Field Office, Hempstead, TX	12	2
Total Reviewed			138	18



**USDA'S  
NATURAL RESOURCES CONSERVATION  
SERVICE'S  
RESPONSE TO AUDIT REPORT**





United States Department of Agriculture

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**June 2, 2014**

**SUBJECT: Natural Resources Conservation Service Agency  
Response – Audit Report – 10601-0001-31  
Environmental Quality Incentives Program**

**TO: Gil H. Harden  
Assistant Inspector General for Audit  
Office of Inspector General**

**Attached are NRCS' responses to Audit Report – 10601-0001-31, Environmental Quality Incentive Program. The responses address the actions taken and planned for audit recommendations 1 through 6.**

**If you have questions, please contact Leon Brooks, Director, Compliance Division, at (301) 504-2190, or email at [leon.brooks@wdc.usda.gov](mailto:leon.brooks@wdc.usda.gov).**

**/s/ Thomas W. Christensen for**

**Jason A. Weller  
Chief**

**Attachments**

**Agency Responses - Audit Report Audit 10601-0001-31  
Environmental Quality Incentives**

**Finding 1: NRCS State Offices Do Not Sufficiently Base their Allocations on Environmental Concerns**

**Recommendation 1**

Implement controls and clarify guidance provided in the Environmental Quality Incentives Program (EQIP) manual to ensure the allocation methodology used by State Conservationists relate to environmental concerns.

**Recommendation 2**

Schedule and conduct analysis of State allocation formulas to ensure that identified resource concerns are the primary factor for allocating EQIP funding.

**Agency Response:**

As noted in the Office of Inspector General (OIG) audit report, EQIP program policy includes guidance to State Conservationists for development of a fund allocation formula which provides for targeting of funds towards priority natural resource concerns. The OIG audit report notes that States have not implemented this policy consistently and controls to assure that environmental benefits are optimized through the allocation process could be reinforced.

Recommendation 1: NRCS agrees to update EQIP policy to revise and clarify State Conservationists' responsibility to develop and implement robust and meaningful EQIP State allocation formulas to provide assurance that funding is appropriately targeted to priority natural resource concerns. The EQIP policy manual is being updated and is expected to be finalized in September 2014 for FY 2015 implementation.

Recommendation 2: NRCS agrees to conduct analysis of State-developed EQIP allocation formulas to help identify inconsistencies in interpretation of EQIP policy and use of appropriate factors used to target funding to priority natural resource concerns. NRCS will conduct this review during FY 2014, and incorporate any needed revision of EQIP policy in FY 2015.

**ESTIMATED COMPLETION DATE:**

1. Recommendation 1: October 15, 2014
2. Recommendation 2: December 31, 2014.

**Finding 2: NRCS Inconsistently Verifies That Practices Are Completed Prior to Payment**

### **Recommendation 3**

Develop and implement procedures that require certifying officials to perform on-site verification that observable practices are completed in accordance to practice standards and specifications.

#### **Agency Response:**

The OIG audit report notes that the States were inconsistent in use of field verification of practices implemented through EQIP. The report suggests that existing NRCS policy allows State Conservationists to establish policy and manage workload associated with practice certification resulting in payment for practice implementation which may not meet NRCS requirements. OIG contends that lack of physical visits to each site where an EQIP-funded practice is implemented may not result in expected environmental benefits.

To facilitate efficient use of NRCS personnel, contractors, TSPs, and other qualified individuals, NRCS General Manual policy does allow State Conservationists latitude to accept certification of installed practices if appropriate documentation is provided that verify that design standards have been met. The fact that actual field verification checks were not conducted by NRCS personnel does not necessarily equate to poor practice installation or performance. NRCS policy also requires spot check of all practices implemented with NRCS assistance to assure that such practices meet design standards and the conservation intent. Contracting policy requires that annual contract reviews to assure practices are checked and certified to meet NRCS standards. The State Conservationist is responsible for all policy, certifications, and spot checks are followed and implemented to assure conservation benefits are realized. NRCS will complete review of policy and procedures during FY 2014, and if needed, EQIP and GM policy will be revised. NRCS will issue a memo or National Bulletin reminding local office staff of proper certification and documentation procedures.

**ESTIMATED COMPLETION DATE:** October 15, 2014.

### **Finding 3: NRCS Does Not Always Identify Participants as Non-Compliant with Contract Timelines**

#### **Recommendation 4**

Issue a memo reminding NRCS local office staff of the procedures identified in the *Conservation Program Contracting Manual* and the importance of timely identifying participants as non-compliant when performing an annual contract review.

#### **Agency Response:**

The OIG audit report notes that NRCS field staff may not provide timely notification of non-compliance with provisions of the contract agreement as required by contracting policy. The finding suggests that promptly completed contract reviews will provide the agency and participant with time to complete corrective actions and meet the conservation intent. The OIG audit report suggests NRCS issue a memo or bulletin reminding field staff that timely completion of required contract reviews will provide the agency and participants more

flexibility in taking appropriate actions to reschedule practice implementation to bring the contract in compliance.

NRCS will issue the bulletin reminder as requested during FY 2014 reminding State Conservationists to enforce provisions of contracting policy for timely completion of EQIP program contract reviews.

**ESTIMATED COMPLETION DATE:** September 30, 2014.

**Finding 4: NRCS Does Not Perform Follow-Up Visits on Practices with a Multi-Year Lifespan After Contract Expiration**

**Recommendation 5**

Obtain a formal Office of the General Counsel (OGC) opinion regarding the intent of the law, specifically, if the practice should be maintained by the participant for the lifespan of the practice versus the duration of the contract and whether NRCS has authority to perform onsite inspections and enforce compliance, even though the contract period may have expired.

**Agency Response:**

The OIG audit report asks that NRCS obtain a formal OGC written opinion to verify the extent of program authority to enforce provisions of the EQIP contract agreement during and after the expiration of the contract. The OIG audit report suggests that EQIP program legislation provides NRCS with mandate to assist producers after contract expiration to help or authority to require enforcement of required maintenance of practices.

NRCS has repeatedly consulted OGC on this topic since EQIP was first authorized in 1996 and most recently during the promulgation of the EQIP interim rule subsequent to enactment of the Food, Conservation, and Energy Act of 2008. Throughout, OGC had advised that NRCS did not have the authority to enforce practice lifespan requirements as a contract violation matter upon expiration of the EQIP contract period, and NRCS rule and policy were based upon such OGC advice. Additionally, NRCS has provided documentation of such advice to OIG. Nevertheless, given recent OGC personnel changes, NRCS agrees with the request and will obtain written confirmation from OGC whether NRCS may enforce provisions of the EQIP contract for practice maintenance after expiration of the EQIP contract.

**ESTIMATED COMPLETION DATE:** July 2014.

## **Recommendation 6**

Based on the formal OGC opinion, implement any appropriate revision to the regulation to clarify NRCS' authority to enforce compliance of conservation practice maintenance requirements and to ensure consistency with the intent of the law. Also, NRCS should ensure program procedures and required contract documentation signed by the participant are consistent with the regulation and the intent of the law.

### **Agency Response:**

If the OGC opinion (Recommendation #5) provides clarification that EQIP statutory authority provides NRCS with authority to enforce compliance of conservation practice maintenance after contract expiration, NRCS will revise policy to accommodate the provision and appropriate training, procedures, and notification of program participants.

**ESTIMATED COMPLETION DATE:** October 15, 2014.

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